



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill repeals an existing tax exemption for certain skyboxes, luxury boxes or other box seats for use during a high school or college football game.

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION:

##### **Sales Tax**

Florida's six percent sales and use tax as provided in Chapter 212, F.S., is not a single levy, but is composed of a number of different levies on a variety of transactions. A "use" tax is imposed on items not sold, but used in Florida. The various levies of sales and use tax are:

- Transient rental (s. 212.03, F.S.): Establishes a taxable privilege for lease or rental of hotels, motels, and apartments for periods of less than six months.
- Lease or rental of or license in real property (s. 212.031, F.S.): Establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real commercial property.
- Admissions (s. 212.04, F.S.): Establishes a taxable privilege for selling or receiving anything of value by way of admissions.
- Sale of tangible personal property (s. 212.05(1)(a), F.S.): Establishes a taxable privilege for the sale of items or articles of tangible personal property.
- Use of tangible personal property (s. 212.05(1)(b), F.S.): Establishes a taxable privilege on items or articles of tangible personal property which are not sold but are used, consumed, distributed, or stored for use or consumption in Florida. The tax is based on the "cost price" of the article, which is a calculation of the cost of an item including materials, labor, service costs, transportation and any other expenses.
- Lease or rental of tangible personal property (s. 212.05(1)(c), F.S.): Establishes a taxable privilege for the lease or rental of tangible personal property.
- Coin-operated amusement machines (s. 212.05(1)(i), F.S.): Establishes a taxable privilege for coin-operated amusement machine charges at the rate of 4 percent.
- Certain services (s.212.05(1)(j), F.S.): Establishes a taxable privilege for the sale of detective, burglar protection, and other protective services and for the sale of nonresidential cleaning and nonresidential pest control services.
- Service Warranties (s. 212.0506, F.S.): Establishes a taxable privilege on every person who engages in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty. "Service warranty" means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining repairing, or replacing tangible personal property.

Other than the services mentioned above, services are not directly subject to Florida's sales and use tax. This lack of tax on most services is not due solely to exemptions from the tax, but from the fact that services are not specified as taxable. In addition, s. 212.08(7)(v), F.S., exempts personal, professional, and financial services when provision of such services involves inconsequential elements of tangible personal property such as documents representing the service provided. Numerous other services, however, are taxed such as repair and maintenance services that also involve the sale of tangible personal property.

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by this chapter. The law provides more than 200 non-service exemptions. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations.<sup>1</sup>

Chapter 99-238, L.O.F., enacted subsection (9) of s. 212.031, F.S., providing an exemption from sales and use tax, for the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game, when the charge for the rental, lease, sublease or license is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code. According to the Department of Revenue, the following utilize the exemption:

- University of Florida Booster Association for University of Florida stadium
- Florida State University Booster Association for FSU stadium
- Florida Citrus Sports Association (Citrus Bowl, Capital One Bowl, Champs Sports Bowl, etc.),
- Gator Bowl,<sup>2</sup> and
- Miscellaneous other 501(c)(3) nonprofit organizations identified by IRS with athletic activity codes and names that suggest that they may benefit from the sales tax exemption.

### ***Local Discretionary Sales Surtaxes (also referred to as, Local Option Sales Taxes)***

Local governments are authorized to levy seven different types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions authorized pursuant to Chapter 212, F.S., and communications services as defined for purposes of Chapter 202, F.S.<sup>3</sup>

The local discretionary sales surtax rate is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The rate varies from county to county, depending on the particular levies authorized in that jurisdiction. The sales amount is not subject to tax if the property or service is delivered within a county that does not impose a surtax. In addition, the surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service.<sup>4</sup>

### **PROPOSED CHANGES:**

The bill repeals the exemption from sales and use tax, on the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for sue during a high school or college football game, when the charge for the rental, lease, sublease or license is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

The repeal does not affect contracts entered into before January 1, 2005; however, the exempt status of charges imposed under the contracts terminates no later than January 1, 2010.

The bill clarifies that the repeal does not affect any other sales tax exemption granted under Chapter 212, F.S., to qualified s. 501(c)(3) organizations.

The bill takes effect July 1, 2005.

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<sup>1</sup> Section 212.08(7), F.S., provides for 54 miscellaneous exemptions.

<sup>2</sup> When the Revenue Estimating Conference met on March 15, 2005, there was some question as to whether or not the Gator Bowl had a 501(c)(3) nonprofit organization responsible for the sale of tickets. Staff is obtaining information on this issue.

<sup>3</sup> Section 212.054(2), F.S.

<sup>4</sup> Section 212.054, F.S.

C. SECTION DIRECTORY:

Section 1 repeals s. 212.031(9), F.S., relating to exemption from taxation on rental, lease, sublease, or license for use of certain skyboxes, luxury boxes, or other box seats; renumbers subsequent subsection.

Section 2 provides clarification on contracts affected by repeal and on impact on other sales tax exemptions granted under Chapter 212, F.S.

Section 3 provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	<u>FY 05-06</u>	<u>FY 06-07</u>	<u>FY 07-08</u>
General Revenue	\$200,000	\$300,000	\$300,000
State Trust	insignificant	insignificant	insignificant
2. Expenditures:			
None.			

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:	<u>FY 05-06</u>	<u>FY 06-07</u>	<u>FY 07-08</u>
Local Tax Impact	insignificant	insignificant	insignificant
2. Expenditures:			
None			

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person who rents, leases, or subleases, a skybox, luxury box, or other box seat from a s. 501(c)(3) organization, for use during a high school or college football game will have to pay sales tax on such rental, lease, or sublease.

D. FISCAL COMMENTS:

On March 18, 2005, the Revenue Estimating Conference estimated that the repeal of this exemption should result in an increase to the General Revenue Fund of \$200,000 in FY 2005-06 with an annualized recurring impact of \$300,000. Local tax impacts were estimated to be insignificant.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

The Department of Revenue stated in its analysis of the bill that the repeal of s. 212.031(9), F.S., presents difficulty in implementation, administration, or enforcement because the effective date of the

bill affects contracts for the lease, rental or license to use skyboxes, luxury boxes, or other box seats that were entered into on or after January 1, 2005.

The department expressed concern that the bill is in violation of contract law because “the retroactive nature of this bill will encumber contracts that were in existence before anyone was put on notice of their taxability and require the lessor to collect taxes retroactively.”<sup>5</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

See comments under “Constitutional Issues.” The Department of Revenue recommended that January 1, 2005 be changed to July 1, 2005 or later.

The sponsor has requested that an amendment be drafted to address the issue cited above. The amendment will change the date from January 1, 2005 to January 1, 2006 to give adequate notice to all parties.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>5</sup> See *Supreme Court Advisory Opinion to the Governor*, 509 So.2d 292 (Florida 1987), pp. 19 and 20.